IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.707 OF 2005

IN

SUIT NO.992 OF 2005

Raymond Limited ...Plaintiff

Versus

Filex ...Defendants

.....

Ms.Jyotsna Mukharjee i/b M/s.Rajani Associates for Applicant/Plaintiff.

Mr.Mihir Kamdar i/b Udwadia & Udeshi for Defendants.

.....

CORAM: A.M.KHANWILKAR, J.

AUGUST 9, 2005.

P.C.

1. Heard Counsel for the parties. Perused the pleadings.

2. By this Chamber Summons, the Plaintiff seeks to amend the Plaint so as to incorporate further reliefs, which, according to the Plaintiff

was accidental omission. It is contended on behalf of the Plaintiff that necessary averments in relation to the relief now claimed by way of proposed amendment are made in Paragraphs 17, 22.2 and 22.3 of the Plaint. In fact, the Plaintiff has also paid court fee on claim of Rs.51,000/- towards damages.

3. This Application is, however, opposed by the Defendant on the argument that the omission to ask for relief in terms of proposed amendment results in relinquising that claim at the time of institution of the Suit. If it is so, in view of the bar contained in Order II Rule 2 of the Code of Civil Procedure, the amendment ought not to be granted. Besides, it is contended that there is no substance in the claim putforth on behalf of the Plaintiff, for which reason, even proposed amendment is unwarranted and therefore, ought to be rejected.

4. Having considered the rival submissions, I find force in the argument canvassed on behalf of the Plaintiff that the omission to ask for relief

in terms of proposed amendment is accidental omission. The necessary averment to substantiate that relief is already incorporated in the Plaint as filed in Paragraphs 17, 22.2 and 22.3. As the omission is accidental one, the bar of Order II Rule 2 will have no application, for, the same comes into play only when it is intentional relinquishment of any relief or part of claim. That is not the case on hand.

5. Viewed in this perspective, there is no substance in the objection taken on behalf of the Defendants.

6. Insofar as the argument that there is no substance in the claim putforth by the Plaintiff, that is the matter, which will have to be decided at the trial. That cannot be the basis to non-suit the Plaintiff.

7. Taking overall view of the matter and in the interest of justice, I am inclined to allow the Chamber Summons in terms of prayer clauses (a) and (b), on condition that the Plaintiff shall pay cost

to the Defendants quantified at Rs.500/- (Rupees Five Hundred) to be paid within one week from today.

8. Amendment to be carried out within two weeks from today.

A.M.KHANWILKAR, J.